

**Letter of Findings: 01-20160213N
Indiana Individual Income Tax
For The Tax Year 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Retiree was not an Indiana resident for the 2012 tax year because he did not spend more than 183 days in Indiana and he changed his domicile to a different state. Retiree established that, among other things, (1) he did not have an Indiana Driver's License and Indiana vehicle registration during tax year 2012, (2) he filed his 2012 Arizona state income tax return, and (3) he registered to vote in Arizona. Retiree further took steps to remove his Indiana homestead deduction which he erroneously claimed on his Indiana home for the tax year at issue and paid back the tax benefits he received due to the homestead deduction, including penalty. Retiree thus was not required to file a 2012 Indiana full-year resident individual income tax return and his retirement income was not Indiana income subject to Indiana income tax.

ISSUE

I. Indiana Individual Income Tax - Non-filer - Residency.

Authority: 4 U.S.C. § 114; IC § 6-1.1-12-37; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Miller Brewing Co. v. Indiana Dep't of State Revenue, 903 N.E.2d 64 (Ind. 2009); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23](#); [50 IAC 24-2-5](#).

Taxpayer protests the Department's proposed assessment for the 2012 tax year.

STATEMENT OF FACTS

Taxpayer is an individual with a current Arizona address. Taxpayer did not file an Indiana income tax return for tax year 2012 ("Tax Year at Issue"). In 2015, pursuant to the best information available to the Indiana Department of Revenue ("Department"), the Department's Enforcement Division determined that, for the Tax Year at Issue, Taxpayer was an Indiana resident, that Taxpayer failed to file his Indiana individual income tax return, and that Indiana income tax was due for the Tax Year at Issue.

Taxpayer timely protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Non-filer - Residency.

DISCUSSION

The Department, based on information including Indiana real property records, found that Taxpayer was a full-year Indiana resident for the Tax Year at Issue, that he failed to file his Indiana full-year resident individual income tax return, Form IT-40, and that Indiana income tax was due for the Tax Year at Issue.

Taxpayer disagreed. Taxpayer claimed that he moved to Arizona in 2011 after he retired. Taxpayer asserted that although he owns a house in Indiana, he was an Arizona resident since 2011 and he was not an Indiana resident for the Tax Year at Issue. The issue is whether Taxpayer was an Indiana resident for the Tax Year at Issue.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." Miller Brewing Co. v. Indiana Dep't of State Revenue, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). When an individual only has retirement income, under 4 U.S.C. § 114(a), Indiana may only impose state income tax "on any retirement income of an individual who is [] a resident or domiciliary of [Indiana] (as determined under the laws of [Indiana])." As for nonresident person who has Indiana income and is required to file his or her Indiana income tax return, IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax.

For Indiana income tax purposes, the presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

[45 IAC 3.1-1-23](#)(2) explains further how "residency" affects a taxpayer's income tax liability, in relevant part, as follows:

Taxpayer Moving from Indiana. Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable. . . .

To determine a person's domicile, [45 IAC 3.1-1-22](#) states:

For the purposes of this Act, **a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) **Purchasing or renting residential property**
- (2) **Registering to vote**
- (3) Seeking elective office
- (4) **Filing a resident state income tax return or complying with the homestead laws of a state**
- (5) Receiving public assistance
- (6) **Titling and registering a motor vehicle**
- (7) Preparing a new last will and testament which includes the state of domicile.

(Emphasis added).

Indiana law further defines "[h]omestead" as "an individual's principal place of residence . . . that is located in Indiana" and that "the individual owns" IC § 6-1.1-12-37(a)(2). "'Principal place of residence' means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." [50 IAC 24-2-5](#). A taxpayer is entitled to claim a deduction, known as homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). The taxpayer taking the credit does so with a certified statement. IC § 6-1.1-12-37(e). If the taxpayer changes his or her use of the property such that it would no longer qualify for the credit, the taxpayer must inform the county of that change and ask that the credit be removed within sixty days after the date of that change. IC § 6-1.1-12-37(f)(1). If a taxpayer does not make that declaration when the use of the property has changed and ask that the credit be removed, the taxpayer is required to pay back the tax benefits it received due to the homestead deduction as well as a ten-percent penalty and other likely fees. IC § 6-1.1-12-37(f).

Thus, a new domicile is not necessarily created when an individual moves to a place outside of Indiana. Instead, the individual must move to the new location and have an intent to remain there indefinitely.

In *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. Mr. Walton lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* at 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, Mr. Walton did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

'[D]omicile' . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Id. (Internal citations omitted)(Emphasis added).

In explaining the difference between "residence" and "domicile," the court in *Croop* stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."

To effect a change of domicile, **there must be an abandonment of the first domicile** with an **intention not to return to it**, and there must be **a new domicile acquired by residence elsewhere** with an **intention of residing there permanently, or at least indefinitely.**

Id. (Internal citations omitted)(Emphasis added).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the issue of the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court stated, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**"

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.**

Id. at 1317-18 (**emphasis added**).

Taxpayer, in this instance, contended that after he retired, he moved to Arizona and became an Arizona resident since 2011. Taxpayer argued that he was not required to file an Indiana income tax return for the Tax Year at Issue because he was not an Indiana resident and did not have Indiana income for the Tax Year at Issue. Taxpayer stated that he owns a residence in Indiana but the Indiana homestead deduction was erroneously claimed. Taxpayer further maintained that he removed the homestead exemption on the Indiana residence and paid back the difference in property tax after he was aware of the error. Similar to Mr. Walton who was domiciled in Michigan before moving to Indiana, Taxpayer was a longtime Indiana resident and domiciled in Indiana before he decided to move. Thus, to determine whether Taxpayer was an Indiana resident for the Tax Year at Issue, the Department must first determine whether Taxpayer effectively changed his domicile to a different state other than Indiana before 2012.

Upon review, as mentioned earlier "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." [45 IAC 3.1-1-22](#). "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." Croop, 157 N.E. at 276; see also Bayh, 521 N.E.2d at 1317-18. In this instance, it is well-established that Taxpayer was domiciled in Indiana since 2005. Publicly verifiable records established that Taxpayer was the owner of the Indiana home since 2005 and he claimed Indiana homestead deduction on that house for 2012 pay 2013 year. When the homestead deduction was claimed, Taxpayer necessarily affirmed that the Indiana home is his "true, fixed, permanent home to which [he has] the intention of returning after an absence." Otherwise, Taxpayer was required to notify the county that he no longer qualified for the homestead deduction within sixty days after the date of that change. IC § 6-1.1-12-37(f). Thus, there is a rebuttable presumption that Taxpayer was an Indiana resident for 2012 tax year.

Taxpayer at the phone hearing stated that in 2011, he retired, moved to Arizona, and became an Arizona resident. To support his protest, in addition to his 2012 Arizona return, and the Settlement Statement (HUD-1) for the purchase of his Arizona home, Taxpayer offered his monthly credit card statements for 2012. Taxpayer also registered to vote in Arizona in 2016 and offered a copy of his 2016 Arizona "Voter Identification Certificate." Taxpayer maintained that the Indiana homestead deduction was mistakenly claimed on his Indiana house, that he removed the homestead exemptions and paid back the additional tax, and that he did not spend more than 183 days for each of the Tax Year at Issue.

Upon review, Taxpayer's documentation showed that he purchased his Arizona home in 2011, filed his 2012 Arizona "Resident Personal Income Tax Return," and registered to vote in Arizona. Taxpayer's credit card statements also established that he spent more than 183 days in Arizona during 2012. Taxpayer's additional documents further supported that he took steps to remove the Indiana homestead deduction and that he paid back the tax benefits for the Tax Year at Issue. Given the totality of the circumstances, the Department is prepared to agree that for the Tax Year at Issue, Taxpayer met his burden to demonstrate that he was not an Indiana resident because he changed his domicile to Arizona prior to 2012 and that he did not spend more than 183 days in Indiana even though he still owned a house in Indiana. IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Pursuant to 4 U.S.C. § 114(a), Taxpayer's retirement income was not subject to Indiana income tax for the Tax Year at Issue.

Finally, it should be noted that Taxpayer, who continues to maintain a permanent place of residence in Indiana, is on notice that for the purposes of determining Indiana residency, each year stands alone. Going forward, if similar

circumstances arise again for different tax years, Taxpayer will be required to accordingly document their potential residency issues.

FINDING

Taxpayer's protest of Indiana residency for 2012 is sustained.

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An [html](#) version of this document.